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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,438	09/23/2003	David Milstein	M61.12-0545	2338
27366 7590 06/15/2009 WESTMAN CHAMPLIN (MICROSOFT CORPORATION) SUITE 1400 900 SECOND AVENUE SOUTH MINNEAPOLIS, MN 55402				
EXAMINER BENZON, GREG C				
ART UNIT		PAPER NUMBER		
2444				
MAIL DATE		DELIVERY MODE		
06/15/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: DAVID MILSTEIN and LINDA CRIDDLE

Application No. 10/668,438
Technology Center 2400

Mailed: June 15, 2009

Before QUITA GOULD, *Supervisory Paralegal Specialist, Review Team*
GOULD, *Supervisory Paralegal Specialist, Review Team*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on April 1, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

EXAMINER'S ANSWER, EVIDENCE RELIED UPON

Section §1207.02 of the *Manual of Patent Examining Procedure*

(MPEP) (Eighth Edition, Rev. 6, September 2007) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . . .

- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed on August 19, 2008, and the examiner's communication to applicant mailed on October 22, 2008 is deficient because the "Evidence Relied Upon" section fails to include the references Kennewick (US Publication 2004/0193420) and **Mondragon** (US Publication 2002/0103879) cited on pages 11 and 13, respectively, in the Examiner's Answer's grounds of rejection of Claims 9-12, 20, 30-33, 38, 47-49, 56 and Claim 60 under 35 USC § 103(a).

Appropriate correction is required

CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1) to vacate the Communication mailed on October 22, 2008;
- 2) to issue a PTO-90 citing the missing references listed under the Evidence Relied Upon section, paragraph (8); and
- 3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

QG/llw

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